

Application No.: 10/772,235

Docket No.: 22227-00005-US1

Group II, claims 1, 2, 4-6, 8-12 and 14-53, drawn to the compounds of formula I, II and III, their composition, and methods of use wherein Y is C-O, or CR₈;

Group III, claims 1, 2, 4, 6, 8, 10, 12 and 16-53, drawn to the compounds of formula I, their composition, and methods of use wherein Y is a direct bond or O; and

Group IV, claim 54, drawn to the compounds of formula V.

Applicants have elected, with traverse, Group I, claims 1-53 drawn to the compounds of formula I, II and III, their compositions, and methods of use wherein Y is NR₁₀- or N, for examination. In addition, Applicants elect, with traverse, for search purposes only, the first compound of claim 5 as a species for examination. Claims 1, 4, 5, 15 and 16-53 read on the elected species.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. §803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. §803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner states that the Groups are different; however, Applicants submit that the Examiner has provided insufficient support in his belief, and therefore, the Examiner's reasoning is nearly a restatement of the Examiner's conclusion that the groups are patentably distinct. As the Examiner has provided insufficient reasons in his belief, the Examiner has not met the burden placed upon him, and accordingly, the restriction is believed to be improper and should be withdrawn.

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In addition, Applicants respectfully traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons, whatsoever, to support the conclusion of patentable distinctness. Rather, the Office has merely stated the conclusion.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species claimed (M.P.E.P. §808.01 (a)). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

Accordingly, and for the reason presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Election of Species Requirement. Withdrawal of the Election of Species Requirement is respectfully requested.

With respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Finally, Applicants respectfully submit that the Office has not shown that a serious burden exists in searching the entire application.

Applicants submit this application is now in condition for examination on the merits and early notification of such action is earnestly solicited.

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Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 22227-00005-US1 from which the undersigned is authorized to draw.

Dated: November 27, 2006

Respectfully submitted,

By  52,834 FOR
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